

**COMMISSION TO STUDY ISSUES RELATIVE TO
THE COMPREHENSIVE SHORELAND PROTECTION ACT
Chapter 209, Senate Bill 83**

**Testimony of Steven J. Winter
Newbury, NH**

Good morning, Mr. Chairman and Members of the Committee. For the record, my name is Steve Winter and I am a resident taxpayer of Newbury, New Hampshire.

This commission's title indicates that you are studying "issues" regarding the Shoreland Protection Act. I have an issue but was not sure it was in your charge until I read the bill. Chapter 209:3, Duties, has 10 sections. Section Number (Roman) X says that you are to review current enforcement provisions of the act.

As some of you may know, we have a rather contentious process ongoing in Newbury regarding the placement by the Department of Fish and Game of a boat launch site at a location in Newbury on the southwestern shore of Lake Sunapee called Wild Goose.

I don't want to take your time by delving into all of the issues but the three main ones are:

- First, the small road leading into and out of the Wild Goose site presents a very dangerous entry onto Route 103, which is a heavily traveled thoroughfare.**
- Second, a much more appropriate location for the boat launch would be at the existing but outdated site at the state beach, located just up the road and owned by the Department of Resources and Economic Development. Planning at this location has been stymied by what appears to local citizens to be a "turf war" between DRED and Fish and Game.**
- Finally, we have indications of plans by Fish and Game to ignore the General Court's will with regard to compliance with the Shoreland Protection Act and this is what I would like to discuss with you today.**

When this issue first came to my attention in 2001, I was a member of the General Court and I scheduled a meeting with the Executive Director of Fish and Game, Director Wayne Vetter. When I brought up the considerations of the Shoreland Protection Act, Mr. Vetter produced a letter, dated March 26, 2001, from the Attorney General's office, signed by Craig S. Donais, Assistant Attorney General. The letter stated that the state was not subject to local zoning regulations unless the legislature clearly indicated a contrary desire within the legislation.

I sent a letter to the A.G.'s office, pointing out that, within the Act:

- Section B:3(I) states, "All state agencies shall perform their responsibilities in a manner consistent with the intent of this chapter. State and local permits for work within the protected shorelands shall be issued only when consistent with the policies of this chapter.
- If one merely reads on to the next paragraph [B:3(II)], one will see that the legislature specifically directed that, "When the standards and practices established in the chapter conflict with other local or state laws and rules, the more stringent standard shall control".

Further, if you look at Sections B:4, Definitions and B:6, Prior Approvals and Permits, it is also clear that the legislature intended that the state must comply with the provisions of this act.

- Section B:6 of the Act states in paragraph I, "Within the protected shoreland, any person (remember the word "person") intending to:" and then goes on to list various activity which might take place, many of which Fish and Game intends to do, such as, earth excavation activity, altering the bank, clear cutting trees for a parking lot, conducting activity resulting in a contiguous disturbed area exceeding 50,000 square feet, etc.

- Paragraph XII of the Section B:4 Definitions says, “‘Person’ means a corporation, company, society, firm, partnership or joint stock company, as well as an individual, a state, and any political subdivision of a state, or any agency or instrumentality thereof.

I sent all of the above information to the Attorney General’s office in a letter dated July 15, 2002. I was stonewalled for months. I finally received a letter from the A.G.’s office (Chris Helm) stating the A.G.’s office could not provide legal opinions individually to members of the legislature. It could only respond to the legislature as a whole.

I pointed out that I was not asking for legal advice. I can read the English language. I was asking that the A.G.’s office uphold the law as passed by the legislature. I received no response to that second letter.

I have heard from the town of Newbury that the latest information they have from the Department of Fish and Game is that the department intends to proceed with the construction of this boat launch at the Wild Goose site and that the department has not applied for any permits from the town of Newbury and does not intend to do so.

So, where does one go in this great state of New Hampshire to have the laws of the state acknowledged and enforced? Clearly, the Department of Fish and Game cannot proceed without complying with the positive wording of the legislation. I’m looking for answers from the involved departments. The Department of Environmental Services, the Attorney General’s office, and the Office of Energy and Planning are all members of this commission. Surely, you need to sign off on this project, especially since so many questions have been raised by the legislative representatives and many, many citizens of the town.

The Department of Environmental Services has the authority and responsibility to enforce the Shoreland Protection Act. The Attorney General’s Office has the authority and responsibility to enforce all of the laws of the State of New Hampshire.

Questions – Is the enforcement of this act going to fall between the cracks? Does the Attorney General's office stand by the March 13, 2001 letter stating that Fish and Game can proceed without local permitting when the law is so very clear that it cannot? Is DES going to approve the plan on this site without the necessary permits from the town of Newbury which has in place local restrictive shoreland ordinances which are more restrictive than state law? Such permits are required by the Shoreland Protection Act.

What are your departments or this commission going to do to prevent the Department of Fish and Game from ignoring our state laws? Would anybody care to respond?